

# United States District Court

EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

NATHAN EARL BURGESS

v.

PEGGY O. KELLER

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Civil Action No. 4:17-CV-531

(Judge Mazzant/Judge Nowak)


## **MEMORANDUM REJECTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On December 6, 2017, the report of the Magistrate Judge (Dkt. #7) was entered containing proposed findings of fact and recommendations that Plaintiff Nathan Earl Burgess's claims be dismissed pursuant to Federal Rule of Civil Procedure 41. The Court rejects the Report and Recommendation.

On November 1, 2017, Plaintiff filed a Motion to Proceed *In Forma Pauperis* (Dkt. #4). On November 5, 2017, the Magistrate Judge denied Plaintiff's Motion to Proceed *In Forma Pauperis*, finding that "Plaintiff's application provides insufficient information from which the Court could determine that Plaintiff is unable to pay the filing fee" (Dkt. #5 at p. 2). A plaintiff who wishes to proceed *in forma pauperis* must file an affidavit attesting to his indigence. See 28 U.S.C. § 1915(a)(1). "The affidavit is sufficient if it states that, due to poverty, plaintiff cannot afford to pay the costs of legal representation and still provide for himself and his dependents." *Bright v. Hickman*, 96 F. Supp. 2d 572, 575 (E.D. Tex. 2000) (citing *Adkins*, 335 U.S. at 339; *Weber v. Holiday Inn*, 42 F. Supp. 2d 693, 697 (E.D. Tex. 1999)). Upon review, the undersigned finds that Plaintiff's Motion to Proceed *In Forma Pauperis* is not insufficient and should instead be granted. Accordingly,

It is therefore **ORDERED** that the Magistrate Judge's Report and Recommendation (Dkt. #7) is **REJECTED**, and the case is returned to the Magistrate Judge for further proceedings consistent with this opinion.

**SIGNED this 20th day of February, 2018.**

  
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AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE